IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.209 OF 2006

Jayant Maniklal Lunawat ...Petitioner

Versus

Shri D.G.Phadke & Ors. ...Respondents

.....

Mr.R.D.Soni i/b M/s.Ram & Co. for Petitioner.

None for Respondents.

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**CORAM: A.M.KHANWILKAR, J.**

**JULY 11, 2006.**

**P.C.**

1. As none appeared for the Petitioner, Petition was dismissed for non-prosecution in the morning session. After lunch break by Mr.Soni for Petitioner mentioned the matter, pointing out that at the relevant time, he was busy in some other Court.

2. In the circumstances, earlier order dismissing the Petition for non-prosecution is recalled. Petition is restored to file to its

original number and taken up for hearing forthwith.

3. Heard Counsel for the Petitioner.

4. The grievance in this Petition is that the Respondent Society, notwithstanding order of injunction is resorting to frivolous and vexatious representation to the Corporation which has the effect of obstructing the construction work of the Petitioner. Indeed, in the application which was filed before the subordinate Court, specific relief was claimed by the Petitioner in terms of prayer clause (b) which reads thus :

> "(b) During the pendency of the persent dispute the opponent may kindly be restrained by an order of temporary injunction from publishing any matter in newspaper or elsewhere, calling the construction standing on the said property more particularly described in para 1 above, to be illegal and unauthorised one, either personally or through its agents, servants, assigns etc."

5. However, even on fair reading of the Judgment of the Maharashtra State Cooperative Appellate Court dated 19th September 2005, it is

not possible to accept the claim of the Petitioner, for, relief in terms of prayer clause (b) has been granted by the Appellate Court. As such, all that the Appellant Court has done while allowing the Appeal is, restrain the Respondents by directing not to obstruct in any way work of construction of Appellant. It is in this context, Counsel for the Petitioner contends that frivolous and vexatious representations made by the Respondent Society to the Corporation results in obstructing construction work undertaken by the Petitioner. It is not possible to accept this submission.

6. There can be no injunction to the effect that the Respondent Society shall not take recourse to remedy available in law. Suffice it to observe that, that is not the injunction granted by the Appellate Court in the present case. If it is so, question of proceeding in contempt action against Respondents does not arise.

7. Hence, Petition is dismissed.

A.M.KHANWILKAR, J.